



## Senate

General Assembly

February Session, 2012

**File No. 534**

Senate Bill No. 455

*Senate, April 19, 2012*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

### ***AN ACT CONCERNING THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (2) of subsection (d) of section 4-61dd of the  
2 2012 supplement to the general statutes is repealed and the following  
3 is substituted in lieu thereof (*Effective October 1, 2012*):

4 (2) (A) Not later than ninety days after learning of the specific  
5 incident giving rise to a claim that a personnel action has been  
6 threatened or has occurred in violation of subdivision (1) of this  
7 subsection, a state or quasi-public agency employee, an employee of a  
8 large state contractor or the employee's attorney may file a complaint  
9 against the state agency, quasi-public agency, large state contractor or  
10 appointing authority concerning such personnel action with the Chief  
11 Human Rights Referee designated under section 46a-57. Upon receipt  
12 of such complaint, the Chief Human Rights Referee shall cause a copy  
13 of the complaint to be hand-delivered or mailed to the supervising  
14 attorney of the Commission on Human Rights and Opportunities.

15 Such complaint may be amended if an additional incident giving rise  
16 to a claim under this subdivision occurs subsequent to the filing of the  
17 original complaint. The Chief Human Rights Referee shall assign the  
18 complaint to a human rights referee appointed under section 46a-57,  
19 who shall conduct a hearing and issue a decision concerning whether  
20 the officer or employee taking or threatening to take the personnel  
21 action violated any provision of this section. The human rights referee  
22 may order a state agency or quasi-public agency to produce (i) an  
23 employee of such agency or quasi-public agency to testify as a witness  
24 in any proceeding under this subdivision, or (ii) books, papers or other  
25 documents relevant to the complaint, without issuing a subpoena. If  
26 such agency or quasi-public agency fails to produce such witness,  
27 books, papers or documents, not later than thirty days after such order,  
28 the human rights referee may consider such failure as supporting  
29 evidence for the complainant. If, after the hearing, the human rights  
30 referee finds a violation, the referee may award the aggrieved  
31 employee reinstatement to the employee's former position, back pay  
32 and reestablishment of any employee benefits for which the employee  
33 would otherwise have been eligible if such violation had not occurred,  
34 reasonable attorneys' fees, and any other damages. For the purposes of  
35 this subsection, such human rights referee shall act as an independent  
36 hearing officer. The decision of a human rights referee under this  
37 subsection may be appealed by any person who was a party at such  
38 hearing or by the Commission on Human Rights and Opportunities, in  
39 accordance with the provisions of section 4-183.

40 (B) The Chief Human Rights Referee shall adopt regulations, in  
41 accordance with the provisions of chapter 54, establishing the  
42 procedure for filing complaints and noticing and conducting hearings  
43 under subparagraph (A) of this subdivision.

44 Sec. 2. Subdivision (4) of section 46a-51 of the 2012 supplement to  
45 the general statutes is repealed and the following is substituted in lieu  
46 thereof (*Effective October 1, 2012*):

47 (4) "Commissioner" means [a] an appointed member of the

48 commission;

49 Sec. 3. Section 46a-52 of the general statutes is repealed and the  
50 following is substituted in lieu thereof (*Effective October 1, 2012*):

51 (a) The commission shall consist of [nine persons] a nine-member  
52 governing board. On and after October 1, 2000, such [persons]  
53 members shall be appointed with the advice and consent of both  
54 houses of the General Assembly. (1) On or before July 15, 1990, the  
55 Governor shall appoint five members of the commission, three of  
56 whom shall serve for terms of five years and two of whom shall serve  
57 for terms of three years. Upon the expiration of such terms, and  
58 thereafter, the Governor shall appoint either two or three members, as  
59 appropriate, to serve for terms of five years. On or before July 14, 1990,  
60 the president pro tempore of the Senate, the minority leader of the  
61 Senate, the speaker of the House of Representatives and the minority  
62 leader of the House of Representatives shall each appoint one member  
63 to serve for a term of three years. Upon the expiration of such terms,  
64 and thereafter, members so appointed shall serve for terms of three  
65 years. (2) If any vacancy occurs, the appointing authority making the  
66 initial appointment shall appoint a [person] member to serve for the  
67 remainder of the unexpired term. The Governor shall select one of the  
68 members of the commission to serve as chairperson for a term of one  
69 year. The commission shall meet at least once during each two-month  
70 period and at such other times as the chairperson deems necessary.  
71 Special meetings shall be held on the request of a majority of the  
72 members of the commission after notice in accordance with the  
73 provisions of section 1-225.

74 (b) Except as provided in section 46a-57, the members of the  
75 commission shall serve without pay, but their reasonable expenses,  
76 including educational training expenses and expenses for necessary  
77 stenographic and clerical help, shall be paid by the state upon  
78 approval of the Commissioner of Administrative Services. Not later  
79 than two months after appointment to the commission, each member  
80 of the commission shall receive a minimum of [ten] five hours of

81 introductory training prior to voting on any commission matter. Each  
82 year following such introductory training, each member shall receive  
83 [five] three hours of follow-up training. Such introductory and follow-  
84 up training shall consist of instruction on the laws governing  
85 discrimination in employment, housing, public accommodation and  
86 credit, affirmative action and the procedures of the commission. Such  
87 training shall be organized by the managing director of the legal  
88 division of the commission. Any member who fails to complete such  
89 training shall not vote on any commission matter. Any member who  
90 fails to comply with such introductory training requirement within six  
91 months of appointment shall be deemed to have resigned from office.  
92 Any member who fails to attend three consecutive meetings or who  
93 fails to attend fifty per cent of all meetings held during any calendar  
94 year shall be deemed to have resigned from office.

95 (c) On or before July 15, 1989, the [commission] commissioners shall  
96 appoint an executive director who shall be the chief executive officer of  
97 the Commission on Human Rights and Opportunities to serve for a  
98 term expiring on July 14, 1990. Upon the expiration of such term and  
99 thereafter, the executive director shall be appointed for a term of four  
100 years. The executive director shall be supervised and annually  
101 evaluated by the [commission] commissioners. The executive director  
102 shall serve at the pleasure of the [commission] commissioners but no  
103 longer than four years from July fifteenth in the year of his or her  
104 appointment unless reappointed pursuant to the provisions of this  
105 subsection. The executive director shall receive an annual salary within  
106 the salary range of a salary group established by the Commissioner of  
107 Administrative Services for the position. The executive director (1)  
108 shall conduct comprehensive planning with respect to the functions of  
109 the commission; (2) shall coordinate the activities of the commission;  
110 and (3) shall cause the administrative organization of the commission  
111 to be examined with a view to promoting economy and efficiency. In  
112 accordance with established procedures, the executive director may  
113 enter into such contractual agreements as may be necessary for the  
114 discharge of the director's duties.

115 (d) The executive director may appoint no more than two deputy  
116 directors with the approval of a majority of the members of the  
117 commission. The deputy directors shall be supervised by the executive  
118 director and shall assist the executive director in the administration of  
119 the commission, the effectuation of its statutory responsibilities and  
120 such other duties as may be assigned by the executive director. Deputy  
121 directors shall serve at the pleasure of the executive director and  
122 without tenure. The executive director may remove a deputy director  
123 with the approval of a majority of the members of the commission.

124 (e) The commission shall be within the Department of  
125 Administrative Services for administrative purposes only.

126 Sec. 4. Section 46a-58 of the 2012 supplement to the general statutes  
127 is repealed and the following is substituted in lieu thereof (*Effective*  
128 *October 1, 2012*):

129 (a) It shall be a discriminatory practice in violation of this section for  
130 any person to subject, or cause to be subjected, any other person to the  
131 deprivation of any rights, privileges or immunities, secured or  
132 protected by the Constitution or laws of this state or of the United  
133 States, on account of religion, national origin, alienage, color, race, sex,  
134 age, gender identity or expression, sexual orientation, blindness or  
135 physical disability.

136 (b) Any person who intentionally desecrates any public property,  
137 monument or structure, or any religious object, symbol or house of  
138 religious worship, or any cemetery, or any private structure not owned  
139 by such person, shall be in violation of subsection (a) of this section.  
140 For the purposes of this subsection, "desecrate" means to mar, deface  
141 or damage as a demonstration of irreverence or contempt.

142 (c) Any person who places a burning cross or a simulation thereof  
143 on any public property, or on any private property without the written  
144 consent of the owner, shall be in violation of subsection (a) of this  
145 section.

146 (d) Any person who places a noose or a simulation thereof on any  
147 public property, or on any private property without the written  
148 consent of the owner, and with intent to intimidate or harass any other  
149 person on account of religion, national origin, alienage, color, race, sex,  
150 sexual orientation, blindness or physical disability, shall be in violation  
151 of subsection (a) of this section.

152 (e) Any person who violates any provision of this section shall be  
153 guilty of a class A misdemeanor, except that if property is damaged as  
154 a consequence of such violation in an amount in excess of one  
155 thousand dollars, such person shall be guilty of a class D felony.

156 Sec. 5. Section 46a-89 of the general statutes is repealed and the  
157 following is substituted in lieu thereof (*Effective October 1, 2012*):

158 (a) (1) Whenever a complaint is filed with or by the commission  
159 pursuant to section 46a-82 alleging a violation of section 46a-60 or 46a-  
160 81c, and [a commissioner] the commission believes, upon review and  
161 the recommendation of the investigator assigned, that equitable relief  
162 is required to prevent irreparable harm to the complainant, the  
163 [commissioner] commission may bring a petition in equity in the  
164 superior court for the judicial district in which the discriminatory  
165 practice which is the subject of the complaint occurred or the judicial  
166 district in which the respondent resides, provided this subdivision  
167 shall not apply to complaints against employers with less than fifty  
168 employees.

169 (2) The petition shall seek appropriate temporary injunctive relief  
170 against the respondent pending final disposition of the complaint  
171 pursuant to the procedures set forth in this chapter. The injunctive  
172 relief may include an order temporarily restraining the respondent  
173 from doing any act that would render ineffectual any order a presiding  
174 officer may render with respect to the complaint.

175 (3) Upon service on the respondent of notice pursuant to section  
176 46a-89a, the respondent shall be temporarily restrained from taking  
177 any action that would render ineffectual the temporary injunctive

178 relief prayed for in the petition, provided nothing in this section shall  
179 be construed to prevent the respondent from having any employment  
180 duties, enjoined under this section and section 46a-89a, from being  
181 carried out by another employee and the notice shall so provide.

182 (b) (1) Whenever a complaint filed pursuant to section 46a-82 alleges  
183 a violation of section 46a-64, 46a-64c, 46a-81d or 46a-81e, and [a  
184 commissioner] the commission believes that injunctive relief is  
185 required or that the imposition of punitive damages or a civil penalty  
186 would be appropriate, the commission may bring a petition in the  
187 superior court for the judicial district in which the discriminatory  
188 practice which is the subject of the complaint occurred or the judicial  
189 district in which the respondent resides.

190 (2) The petition shall seek: (A) Appropriate injunctive relief,  
191 including temporary or permanent orders or decrees restraining and  
192 enjoining the respondent from selling or renting to anyone other than  
193 the complainant or otherwise making unavailable to the complainant  
194 any dwelling or commercial property with respect to which the  
195 complaint is made, pending the final determination of such complaint  
196 by the commission or such petition by the court; (B) an award of  
197 damages based on the remedies available under subsection (c) of  
198 section 46a-86; (C) an award of punitive damages payable to the  
199 complainant, not to exceed fifty thousand dollars; (D) a civil penalty  
200 payable to the state against the respondent to vindicate the public  
201 interest: (i) In an amount not exceeding ten thousand dollars if the  
202 respondent has not been adjudged to have committed any prior  
203 discriminatory housing practice; (ii) in an amount not exceeding  
204 twenty-five thousand dollars if the respondent has been adjudged to  
205 have committed one other discriminatory housing practice during the  
206 five-year period prior to the date of the filing of this complaint; and  
207 (iii) in an amount not exceeding fifty thousand dollars if the  
208 respondent has been adjudged to have committed two or more  
209 discriminatory housing practices during the seven-year period prior to  
210 the date of the filing of the complaint; except that if the acts  
211 constituting the discriminatory housing practice that is the object of the

212 complaint are committed by the same natural person who has been  
213 previously adjudged to have committed acts constituting a  
214 discriminatory housing practice, then the civil penalties set forth in  
215 clauses (ii) and (iii) of this subparagraph may be imposed without  
216 regard to the period of time within which any subsequent  
217 discriminatory housing practice occurred; or (E) two or more of such  
218 remedies.

219 (3) Upon service on the respondent of notice pursuant to section  
220 46a-89a, the respondent shall be temporarily restrained from selling or  
221 renting the dwelling or commercial property which is the subject of the  
222 complaint to anyone other than the complainant, or from otherwise  
223 making such dwelling or commercial property unavailable to the  
224 complainant, until the court or judge has decided the petition for  
225 temporary injunctive relief and the notice shall so provide.

226 Sec. 6. Section 46a-68d of the general statutes is repealed and the  
227 following is substituted in lieu thereof (*Effective October 1, 2012*):

228 In addition to the provisions of section 4a-60, as amended by this  
229 act, every public works contract subject to the provisions of part II of  
230 chapter 60 shall also be subject to the provisions of this section. After [a  
231 bid has been accepted but before] a public works contract is awarded  
232 but prior to completion of the acts encompassed by such contract, the  
233 successful bidder shall file and have approved by the commission an  
234 affirmative action plan. The commission may provide for conditional  
235 acceptance of an affirmative action plan provided written assurances  
236 are given by the contractor that it will amend its plan to conform to  
237 affirmative action requirements. The state shall withhold [two] five per  
238 cent of the total contract price [per month from any payment made to  
239 such contractor] until such time as the contractor has developed an  
240 affirmative action plan, and received the approval of the commission.  
241 Notwithstanding the provisions of this section, a contractor subject to  
242 the provisions of this section may file a plan in advance of or at the  
243 same time as its bid. The commission shall review [plans] a plan  
244 submitted pursuant to this section within sixty days of receipt and



245 either approve, approve with conditions or reject such plan. When the  
246 commission approves an affirmative action plan pursuant to this  
247 section, it shall issue a certificate of compliance to the contractor as  
248 provided in section 46a-68c.

249 Sec. 7. Section 4a-60 of the 2012 supplement to the general statutes is  
250 repealed and the following is substituted in lieu thereof (*Effective*  
251 *October 1, 2012*):

252 (a) Every contract to which the state or any political subdivision of  
253 the state [other than a municipality] is a party shall contain the  
254 following provisions:

255 (1) The contractor agrees and warrants that in the performance of  
256 the contract such contractor will not discriminate or permit  
257 discrimination against any person or group of persons on the grounds  
258 of race, color, religious creed, age, marital status, national origin,  
259 ancestry, sex, gender identity or expression, intellectual disability,  
260 mental disability or physical disability, including, but not limited to,  
261 blindness, unless it is shown by such contractor that such disability  
262 prevents performance of the work involved, in any manner prohibited  
263 by the laws of the United States or of the state of Connecticut; and the  
264 contractor further agrees to take affirmative action to insure that  
265 applicants with job-related qualifications are employed and that  
266 employees are treated when employed without regard to their race,  
267 color, religious creed, age, marital status, national origin, ancestry, sex,  
268 gender identity or expression, intellectual disability, mental disability  
269 or physical disability, including, but not limited to, blindness, unless it  
270 is shown by such contractor that such disability prevents performance  
271 of the work involved;

272 (2) The contractor agrees, in all solicitations or advertisements for  
273 employees placed by or on behalf of the contractor, to state that it is an  
274 "affirmative action-equal opportunity employer" in accordance with  
275 regulations adopted by the commission;

276 (3) The contractor agrees to provide each labor union or

277 representative of workers with which such contractor has a collective  
278 bargaining agreement or other contract or understanding and each  
279 vendor with which such contractor has a contract or understanding, a  
280 notice to be provided by the commission advising the labor union or  
281 workers' representative of the contractor's commitments under this  
282 section, and to post copies of the notice in conspicuous places available  
283 to employees and applicants for employment;

284 (4) The contractor agrees to comply with each provision of this  
285 section and sections 46a-68e and 46a-68f and with each regulation or  
286 relevant order issued by said commission pursuant to sections 46a-56,  
287 46a-68e and 46a-68f; and

288 (5) The contractor agrees to provide the Commission on Human  
289 Rights and Opportunities with such information requested by the  
290 commission, and permit access to pertinent books, records and  
291 accounts, concerning the employment practices and procedures of the  
292 contractor as relate to the provisions of this section and section 46a-56.

293 (b) If the contract is a public works contract, the contractor agrees  
294 and warrants that he will make good faith efforts to employ minority  
295 business enterprises as subcontractors and suppliers of materials on  
296 such public works project.

297 (c) (1) Any contractor who has one or more contracts with the state  
298 or a political subdivision of the state that is valued at less than fifty  
299 thousand dollars for each year of the contract shall provide the state or  
300 such political subdivision of the state with a written or electronic  
301 representation that complies with the nondiscrimination agreement  
302 and warranty under subdivision (1) of subsection (a) of this section,  
303 provided if there is any change in such representation, the contractor  
304 shall provide the updated representation to the state or such political  
305 subdivision not later than thirty days after such change.

306 (2) Any contractor who has one or more contracts with the state or a  
307 political subdivision of the state that is valued at fifty thousand dollars  
308 or more for any year of the contract shall provide the state or such

309 political subdivision of the state with any one of the following:

310 (A) Documentation in the form of a company or corporate policy  
311 adopted by resolution of the board of directors, shareholders,  
312 managers, members or other governing body of such contractor that  
313 complies with the nondiscrimination agreement and warranty under  
314 subdivision (1) of subsection (a) of this section;

315 (B) Documentation in the form of a company or corporate policy  
316 adopted by a prior resolution of the board of directors, shareholders,  
317 managers, members or other governing body of such contractor if (i)  
318 the prior resolution is certified by a duly authorized corporate officer  
319 of such contractor to be in effect on the date the documentation is  
320 submitted, and (ii) the head of the agency of the state or such political  
321 subdivision, or a designee, certifies that the prior resolution complies  
322 with the nondiscrimination agreement and warranty under  
323 subdivision (1) of subsection (a) of this section; or

324 (C) Documentation in the form of an affidavit signed under penalty  
325 of false statement by a chief executive officer, president, chairperson or  
326 other corporate officer duly authorized to adopt company or corporate  
327 policy that certifies that the company or corporate policy of the  
328 contractor complies with the nondiscrimination agreement and  
329 warranty under subdivision (1) of subsection (a) of this section and is  
330 in effect on the date the affidavit is signed.

331 (3) Neither the state nor any political subdivision shall award a  
332 contract to a contractor who has not provided the representation or  
333 documentation required under subdivisions (1) and (2) of this  
334 subsection, as applicable. After the initial submission of such  
335 representation or documentation, the contractor shall not be required  
336 to resubmit such representation or documentation unless there is a  
337 change in the information contained in such representation or  
338 documentation. If there is any change in the information contained in  
339 the most recently filed representation or updated documentation, the  
340 contractor shall submit an updated representation or documentation,  
341 as applicable, either (A) not later than thirty days after the effective

342 date of such change, or (B) upon the execution of a new contract with  
343 the state or a political subdivision of the state, whichever is earlier.  
344 Such contractor shall also certify, in accordance with subparagraph (B)  
345 or (C) of subdivision (2) of this subsection, to the state or political  
346 subdivision, not later than fourteen days after the twelve-month  
347 anniversary of the most recently filed representation, documentation  
348 or updated representation or documentation, that the representation  
349 on file with the state or political subdivision is current and accurate.

350 (d) For the purposes of this section, "contract" includes any  
351 extension or modification of the contract, "contractor" includes any  
352 successors or assigns of the contractor, "marital status" means being  
353 single, married as recognized by the state of Connecticut, widowed,  
354 separated or divorced, and "mental disability" means one or more  
355 mental disorders, as defined in the most recent edition of the American  
356 Psychiatric Association's "Diagnostic and Statistical Manual of Mental  
357 Disorders", or a record of or regarding a person as having one or more  
358 such disorders. For the purposes of this section, "contract" does not  
359 include a contract where each contractor is (1) a political subdivision of  
360 the state, [including, but not limited to, a municipality,] (2) a quasi-  
361 public agency, as defined in section 1-120, (3) any other state, as  
362 defined in section 1-267, (4) the federal government, (5) a foreign  
363 government, or (6) an agency of a subdivision, agency, state or  
364 government described in subparagraph (1), (2), (3), (4) or (5) of this  
365 subsection.

366 (e) For the purposes of this section, "minority business enterprise"  
367 means any small contractor or supplier of materials fifty-one per cent  
368 or more of the capital stock, if any, or assets of which is owned by a  
369 person or persons: (1) Who are active in the daily affairs of the  
370 enterprise, (2) who have the power to direct the management and  
371 policies of the enterprise, and (3) who are members of a minority, as  
372 such term is defined in subsection (a) of section 32-9n; and "good faith"  
373 means that degree of diligence which a reasonable person would  
374 exercise in the performance of legal duties and obligations. "Good faith  
375 efforts" shall include, but not be limited to, those reasonable initial

376 efforts necessary to comply with statutory or regulatory requirements  
377 and additional or substituted efforts when it is determined that such  
378 initial efforts will not be sufficient to comply with such requirements.

379 (f) Determination of the contractor's good faith efforts shall include  
380 but shall not be limited to the following factors: The contractor's  
381 employment and subcontracting policies, patterns and practices;  
382 affirmative advertising, recruitment and training; technical assistance  
383 activities and such other reasonable activities or efforts as the  
384 commission may prescribe that are designed to ensure the  
385 participation of minority business enterprises in public works projects.  
386 Employment and subcontracting practices which demonstrate that a  
387 contractor has met or surpassed an awarding authority's set-aside  
388 goals shall be evidence of good faith efforts. Failure by a contractor to  
389 solicit: (1) Bids from more than two subcontractors, vendors or service  
390 providers; (2) subcontractors, vendors or service providers in all  
391 project areas; or (3) less than all types of businesses certified by the  
392 Department of Administrative Services pursuant to section 4a-60g, as  
393 amended by this act, shall not necessarily demonstrate a contractor's  
394 lack of good faith efforts.

395 (g) The contractor shall develop and maintain adequate  
396 documentation, in a manner prescribed by the commission, of its good  
397 faith efforts.

398 (h) The contractor shall include the provisions of subsections (a) and  
399 (b) of this section in every subcontract or purchase order entered into  
400 in order to fulfill any obligation of a contract with the state and such  
401 provisions shall be binding on a subcontractor, vendor or  
402 manufacturer unless exempted by regulations or orders of the  
403 commission. The contractor shall take such action with respect to any  
404 such subcontract or purchase order as the commission may direct as a  
405 means of enforcing such provisions including sanctions for  
406 noncompliance in accordance with section 46a-56; provided, if such  
407 contractor becomes involved in, or is threatened with, litigation with a  
408 subcontractor or vendor as a result of such direction by the

409 commission, the contractor may request the state of Connecticut to  
410 enter into any such litigation or negotiation prior thereto to protect the  
411 interests of the state and the state may so enter.

412 Sec. 8. (NEW) (*Effective October 1, 2012*) The protections afforded to  
413 persons under sections 46a-60, 46a-64c, 46a-66, 46a-70, 46a-71, 46a-72,  
414 46a-75 and 46a-76 of the general statutes shall apply to a veteran as  
415 defined in section 27-103 of the general statutes and to an active  
416 member of the armed forces as defined in section 27-103 of the general  
417 statutes.

418 Sec. 9. Subsections (a) and (b) of section 4a-60a of the 2012  
419 supplement to the general statutes are repealed and the following is  
420 substituted in lieu thereof (*Effective October 1, 2012*):

421 (a) Every contract to which the state or any political subdivision of  
422 the state [other than a municipality] is a party shall contain the  
423 following provisions:

424 (1) The contractor agrees and warrants that in the performance of  
425 the contract such contractor will not discriminate or permit  
426 discrimination against any person or group of persons on the grounds  
427 of sexual orientation, in any manner prohibited by the laws of the  
428 United States or of the state of Connecticut, and that employees are  
429 treated when employed without regard to their sexual orientation;

430 (2) The contractor agrees to provide each labor union or  
431 representative of workers with which such contractor has a collective  
432 bargaining agreement or other contract or understanding and each  
433 vendor with which such contractor has a contract or understanding, a  
434 notice to be provided by the Commission on Human Rights and  
435 Opportunities advising the labor union or workers' representative of  
436 the contractor's commitments under this section, and to post copies of  
437 the notice in conspicuous places available to employees and applicants  
438 for employment;

439 (3) The contractor agrees to comply with each provision of this

440 section and with each regulation or relevant order issued by said  
441 commission pursuant to section 46a-56; and

442 (4) The contractor agrees to provide the Commission on Human  
443 Rights and Opportunities with such information requested by the  
444 commission, and permit access to pertinent books, records and  
445 accounts, concerning the employment practices and procedures of the  
446 contractor which relate to the provisions of this section and section  
447 46a-56.

448 (b) (1) Any contractor who has one or more contracts with the state  
449 or a political subdivision of the state that is valued at less than fifty  
450 thousand dollars for each year of the contract shall provide the state or  
451 such political subdivision of the state with a written representation  
452 that complies with the nondiscrimination agreement and warranty  
453 under subdivision (1) of subsection (a) of this section.

454 (2) Any contractor who has one or more contracts with the state or a  
455 political subdivision of the state that is valued at fifty thousand dollars  
456 or more for any year of the contract shall provide the state or such  
457 political subdivision of the state with any of the following:

458 (A) Documentation in the form of a company or corporate policy  
459 adopted by resolution of the board of directors, shareholders,  
460 managers, members or other governing body of such contractor that  
461 complies with the nondiscrimination agreement and warranty under  
462 subdivision (1) of subsection (a) of this section;

463 (B) Documentation in the form of a company or corporate policy  
464 adopted by a prior resolution of the board of directors, shareholders,  
465 managers, members or other governing body of such contractor if (i)  
466 the prior resolution is certified by a duly authorized corporate officer  
467 of such contractor to be in effect on the date the documentation is  
468 submitted, and (ii) the head of the agency of the state or such political  
469 subdivision, or a designee, certifies that the prior resolution complies  
470 with the nondiscrimination agreement and warranty under  
471 subdivision (1) of subsection (a) of this section; or

472 (C) Documentation in the form of an affidavit signed under penalty  
473 of false statement by a chief executive officer, president, chairperson or  
474 other corporate officer duly authorized to adopt company or corporate  
475 policy that certifies that the company or corporate policy of the  
476 contractor complies with the nondiscrimination agreement and  
477 warranty under subdivision (1) of subsection (a) of this section and is  
478 in effect on the date the affidavit is signed.

479 (3) Neither the state nor any political subdivision shall award a  
480 contract to a contractor who has not provided the representation or  
481 documentation required under subdivisions (1) and (2) of this  
482 subsection, as applicable. After the initial submission of such  
483 representation or documentation, the contractor shall not be required  
484 to resubmit such representation or documentation unless there is a  
485 change in the information contained in such representation or  
486 documentation. If there is any change in the information contained in  
487 the most recently filed representation or updated documentation, the  
488 contractor shall submit an updated representation or documentation,  
489 as applicable, either (A) not later than thirty days after the effective  
490 date of such change, or (B) upon the execution of a new contract with  
491 the state or a political subdivision of the state, whichever is earlier.  
492 Such contractor shall also certify, in accordance with subparagraph (B)  
493 or (C) of subdivision (2) of this subsection, to the state or political  
494 subdivision, not later than fourteen days after the twelve-month  
495 anniversary of the most recently filed representation, documentation  
496 or updated representation or documentation, that the representation  
497 on file with the state or political subdivision is current and accurate.

498 (4) For the purposes of this section, "contract" includes any  
499 extension or modification of the contract, and "contractor" includes any  
500 successors or assigns of the contractor. For the purposes of this section,  
501 "contract" does not include a contract where each contractor is (A) a  
502 political subdivision of the state, [including, but not limited to, a  
503 municipality,] (B) a quasi-public agency, as defined in section 1-120,  
504 (C) any other state, as defined in section 1-267, (D) the federal  
505 government, (E) a foreign government, or (F) an agency of a



506 subdivision, agency, state or government described in subparagraph  
507 (A), (B), (C), (D) or (E) of this subdivision.

508 Sec. 10. Section 4a-60g of the 2012 supplement to the general statutes  
509 is repealed and the following is substituted in lieu thereof (*Effective*  
510 *October 1, 2012*):

511 (a) As used in this section and sections 4a-60h to 4a-60j, inclusive,  
512 the following terms have the following meanings:

513 (1) "Small contractor" means any contractor, subcontractor,  
514 manufacturer, service company or nonprofit corporation (A) that  
515 maintains its principal place of business in the state, and (B) that had  
516 gross revenues not exceeding fifteen million dollars in the most  
517 recently completed fiscal year prior to such application. "Small  
518 contractor" does not include any person who is affiliated with another  
519 person if both persons considered together have a gross revenue  
520 exceeding fifteen million dollars.

521 (2) "State agency" means each state board, commission, department,  
522 office, institution, council or other agency with the power to contract  
523 for goods or services itself or through its head.

524 (3) "Minority business enterprise" means any small contractor (A)  
525 fifty-one per cent or more of the capital stock, if any, or assets of which  
526 are owned by a person or persons (i) who exercise operational  
527 authority over the daily affairs of the enterprise, (ii) who have the  
528 power to direct the management and policies and receive the beneficial  
529 interest of the enterprise, and (iii) who are members of a minority, as  
530 such term is defined in subsection (a) of section 32-9n, (B) who is an  
531 individual with a disability, or (C) which is a nonprofit corporation in  
532 which fifty-one per cent or more of the persons who (i) exercise  
533 operational authority over the enterprise, and (ii) have the power to  
534 direct the management and policies of the enterprise are members of a  
535 minority, as defined in this subsection, or are individuals with a  
536 disability.

537 (4) "Affiliated" means the relationship in which a person directly, or  
538 indirectly through one or more intermediaries, controls, is controlled  
539 by or is under common control with another person.

540 (5) "Control" means the power to direct or cause the direction of the  
541 management and policies of any person, whether through the  
542 ownership of voting securities, by contract or through any other direct  
543 or indirect means. Control shall be presumed to exist if any person,  
544 directly or indirectly, owns, controls, holds with the power to vote, or  
545 holds proxies representing, twenty per cent or more of any voting  
546 securities of another person.

547 (6) "Person" means any individual, corporation, limited liability  
548 company, partnership, association, joint stock company, business trust,  
549 unincorporated organization or other entity.

550 (7) "Individual with a disability" means an individual (A) having a  
551 physical or mental impairment that substantially limits one or more of  
552 the major life activities of the individual, which mental impairment  
553 may include, but is not limited to, having one or more mental  
554 disorders, as defined in the most recent edition of the American  
555 Psychiatric Association's "Diagnostic and Statistical Manual of Mental  
556 Disorders", or (B) having a record of such an impairment.

557 (8) "Nonprofit corporation" means a nonprofit corporation  
558 incorporated pursuant to chapter 602 or any predecessor statutes  
559 thereto.

560 (b) It is found and determined that there is a serious need to help  
561 small contractors, minority business enterprises, nonprofit  
562 organizations and individuals with disabilities to be considered for  
563 and awarded state contracts for the construction, reconstruction or  
564 rehabilitation of public buildings, the construction and maintenance of  
565 highways and the purchase of goods and services. Accordingly, the  
566 necessity, in the public interest and for the public benefit and good, of  
567 the provisions of this section, sections 4a-60h to 4a-60j, inclusive, and  
568 sections 32-9i to 32-9p, inclusive, is declared as a matter of legislative

determination. Notwithstanding any provisions of the general statutes to the contrary, and except as set forth herein, the head of each state agency and each political subdivision of the state [other than a municipality] shall set aside in each fiscal year, for award to small contractors, on the basis of competitive bidding procedures, contracts or portions of contracts for the construction, reconstruction or rehabilitation of public buildings, the construction and maintenance of highways and the purchase of goods and services. Eligibility of nonprofit corporations under the provisions of this section shall be limited to predevelopment contracts awarded by the Commissioner of Economic and Community Development for housing projects. The total value of such contracts or portions thereof to be set aside by each such agency shall be at least twenty-five per cent of the total value of all contracts let by the head of such agency in each fiscal year, provided that neither: (1) A contract that may not be set aside due to a conflict with a federal law or regulation; or (2) a contract for any goods or services which have been determined by the Commissioner of Administrative Services to be not customarily available from or supplied by small contractors shall be included. Contracts or portions thereof having a value of not less than twenty-five per cent of the total value of all contracts or portions thereof to be set aside shall be reserved for awards to minority business enterprises.

(c) The head of any state agency or political subdivision of the state [other than a municipality] may, in lieu of setting aside any contract or portions thereof, require any general or trade contractor or any other entity authorized by such agency to award contracts, to set aside a portion of any contract for subcontractors who are eligible for set-aside contracts under this section. Nothing in this subsection shall be construed to diminish the total value of contracts which are required to be set aside by any state agency or political subdivision of the state [other than a municipality] pursuant to this section.

(d) The heads of all state agencies and of each political subdivision of the state [other than a municipality] shall notify the Commissioner of Administrative Services of all contracts to be set aside pursuant to

603 subsection (b) or (c) of this section at the time that bid documents for  
604 such contracts are made available to potential contractors.

605 (e) The awarding authority shall require that a contractor or  
606 subcontractor awarded a contract or a portion of a contract under this  
607 section perform not less than fifteen per cent of the work with the  
608 workforces of such contractor or subcontractor and shall require that  
609 not less than twenty-five per cent of the work be performed by  
610 contractors or subcontractors eligible for awards under this section. A  
611 contractor awarded a contract or a portion of a contract under this  
612 section shall not subcontract with any person with whom the  
613 contractor is affiliated. No person who is affiliated with another person  
614 shall be eligible for awards under this section if both affiliated persons  
615 considered together would not qualify as a small contractor or a  
616 minority business enterprise under subsection (a) of this section. The  
617 awarding authority shall require that a contractor awarded a contract  
618 pursuant to this section submit, in writing, an explanation of any  
619 subcontract to such contract that is entered into with any person that is  
620 not eligible for the award of a contract pursuant to this section, prior to  
621 the performance of any work pursuant to such subcontract.

622 (f) The awarding authority may require that a contractor or  
623 subcontractor awarded a contract or a portion of a contract under this  
624 section furnish the following documentation: (1) A copy of the  
625 certificate of incorporation, certificate of limited partnership,  
626 partnership agreement or other organizational documents of the  
627 contractor or subcontractor; (2) a copy of federal income tax returns  
628 filed by the contractor or subcontractor for the previous year; and (3)  
629 evidence of payment of fair market value for the purchase or lease by  
630 the contractor or subcontractor of property or equipment from another  
631 contractor who is not eligible for set-aside contracts under this section.

632 (g) The awarding authority or the Commissioner of Administrative  
633 Services or the Commission on Human Rights and Opportunities may  
634 conduct an audit of the financial, corporate and business records and  
635 conduct an investigation of any small contractor or minority business

636 enterprise which applies for or is awarded a set-aside contract for the  
637 purpose of determining eligibility for awards or compliance with the  
638 requirements established under this section.

639 (h) The provisions of this section shall not apply to any state agency  
640 or political subdivision of the state [other than a municipality] for  
641 which the total value of all contracts or portions of contracts of the  
642 types enumerated in subsection (b) of this section is anticipated to be  
643 equal to ten thousand dollars or less.

644 (i) In lieu of a performance, bid, labor and materials or other  
645 required bond, a contractor or subcontractor awarded a contract under  
646 this section may provide to the awarding authority, and the awarding  
647 authority shall accept a letter of credit. Any such letter of credit shall  
648 be in an amount equal to ten per cent of the contract for any contract  
649 that is less than one hundred thousand dollars and in an amount equal  
650 to twenty-five per cent of the contract for any contract that exceeds one  
651 hundred thousand dollars.

652 (j) (1) Whenever the awarding authority has reason to believe that  
653 any contractor or subcontractor awarded a set-aside contract has  
654 wilfully violated any provision of this section, the awarding authority  
655 shall send a notice to such contractor or subcontractor by certified  
656 mail, return receipt requested. Such notice shall include: (A) A  
657 reference to the provision alleged to be violated; (B) a short and plain  
658 statement of the matter asserted; (C) the maximum civil penalty that  
659 may be imposed for such violation; and (D) the time and place for the  
660 hearing. Such hearing shall be fixed for a date not earlier than fourteen  
661 days after the notice is mailed. The awarding authority shall send a  
662 copy of such notice to the Commission on Human Rights and  
663 Opportunities.

664 (2) The awarding authority shall hold a hearing on the violation  
665 asserted unless such contractor or subcontractor fails to appear. The  
666 hearing shall be held in accordance with the provisions of chapter 54.  
667 If, after the hearing, the awarding authority finds that the contractor or  
668 subcontractor has wilfully violated any provision of this section, the

669 awarding authority shall suspend all set-aside contract payments to  
670 the contractor or subcontractor and may, in its discretion, order that a  
671 civil penalty not exceeding ten thousand dollars per violation be  
672 imposed on the contractor or subcontractor. If such contractor or  
673 subcontractor fails to appear for the hearing, the awarding authority  
674 may, as the facts require, order that a civil penalty not exceeding ten  
675 thousand dollars per violation be imposed on the contractor or  
676 subcontractor. The awarding authority shall send a copy of any order  
677 issued pursuant to this subsection by certified mail, return receipt  
678 requested, to the contractor or subcontractor named in such order. The  
679 awarding authority may cause proceedings to be instituted by the  
680 Attorney General for the enforcement of any order imposing a civil  
681 penalty issued under this subsection.

682 (k) [On or before January 1, 2000, the] The Commissioner of  
683 Administrative Services shall establish a process for certification of  
684 small contractors and minority business enterprises as eligible for  
685 set-aside contracts. Each certification shall be valid for a period not to  
686 exceed two years. Any paper application for certification shall be no  
687 longer than six pages. The Department of Administrative Services shall  
688 maintain on its web site an updated directory of small contractors and  
689 minority business enterprises certified under this section.

690 (l) On or before August 30, 2007, and annually thereafter, each state  
691 agency and each political subdivision of the state [other than a  
692 municipality] setting aside contracts or portions of contracts shall  
693 prepare a report establishing small and minority business set-aside  
694 program goals for the twelve-month period beginning July first in the  
695 same year. Each such report shall be submitted to the Commissioner of  
696 Administrative Services, the Commission on Human Rights and  
697 Opportunities and the [cochairpersons] chairpersons and ranking  
698 members of the joint standing committees of the General Assembly  
699 having cognizance of matters relating to planning and development  
700 and government administration and elections.

701 (m) On or before November 1, 1995, and quarterly thereafter, each

702 state agency and each political subdivision of the state [other than a  
703 municipality] setting aside contracts or portions of contracts shall  
704 prepare a status report on the implementation and results of its small  
705 business and minority business enterprise set-aside program goals  
706 during the three-month period ending one month before the due date  
707 for the report. Each report shall be submitted to the Commissioner of  
708 Administrative Services and the Commission on Human Rights and  
709 Opportunities. Any state agency or political subdivision of the state [,  
710 other than a municipality,] that achieves less than fifty per cent of its  
711 small contractor and minority business enterprise set-aside program  
712 goals by the end of the second reporting period in any twelve-month  
713 period beginning on July first shall provide a written explanation to  
714 the Commissioner of Administrative Services and the Commission on  
715 Human Rights and Opportunities detailing how the agency or political  
716 subdivision will achieve its goals in the final reporting period. The  
717 Commission on Human Rights and Opportunities shall: (1) Monitor  
718 the achievement of the annual goals established by each state agency  
719 and political subdivision of the state; [other than a municipality;] and  
720 (2) prepare a quarterly report concerning such goal achievement. The  
721 report shall be submitted to each state agency that submitted a report,  
722 the Commissioner of Economic and Community Development, the  
723 Commissioner of Administrative Services and the cochairpersons and  
724 ranking members of the joint standing committees of the General  
725 Assembly having cognizance of matters relating to planning and  
726 development and government administration and elections. Failure by  
727 any state agency or political subdivision of the state [other than a  
728 municipality] to submit any reports required by this section shall be a  
729 violation of section 46a-77.

730 (n) Nothing in this section shall be construed to apply to the four  
731 janitorial contracts awarded pursuant to subsections (b) to (e),  
732 inclusive, of section 4a-82.

733 Sec. 11. Section 4a-61 of the general statutes is repealed and the  
734 following is substituted in lieu thereof (*Effective October 1, 2012*):

735 The Commissioner of Administrative Services, with the advice of  
736 the Commissioner of Economic and Community Development, shall  
737 adopt regulations, in accordance with chapter 54, establishing  
738 procedures for the award of contracts concerning minority business  
739 enterprises by the state or any political subdivision of the state, [other  
740 than a municipality.]

741 Sec. 12. Subsection (a) of section 4a-62 of the 2012 supplement to the  
742 general statutes is repealed and the following is substituted in lieu  
743 thereof (*Effective October 1, 2012*):

744 (a) There is established a Minority Business Enterprise Review  
745 Committee. The committee shall consist of two members of the House  
746 of Representatives appointed by the speaker of the House, two  
747 members of the House appointed by the minority leader of the House,  
748 two members of the Senate appointed by the president pro tempore of  
749 the Senate, and two members of the Senate appointed by the minority  
750 leader of the Senate. The committee shall conduct an ongoing study of  
751 contract awards, loans and bonds made or guaranteed by the state or  
752 any political subdivision of the state [other than a municipality] for the  
753 purpose of determining the extent of compliance with the provisions  
754 of the general statutes concerning contract awards, loans and bonds for  
755 minority business enterprises, including the set-aside program for such  
756 business enterprises.

757 Sec. 13. Section 46a-68b of the general statutes is repealed and the  
758 following is substituted in lieu thereof (*Effective October 1, 2012*):

759 As used in this section and sections 4a-60, as amended by this act,  
760 4a-60a, as amended by this act, 4a-60g, as amended by this act, 4a-62,  
761 as amended by this act, 46a-56 and 46a-68c to 46a-68k, inclusive:  
762 "Public works contract" means any agreement between any individual,  
763 firm or corporation and the state or any political subdivision of the  
764 state [other than a municipality] for construction, rehabilitation,  
765 conversion, extension, demolition or repair of a public building,  
766 highway or other changes or improvements in real property, or which  
767 is financed in whole or in part by the state, including, but not limited



768 to, matching expenditures, grants, loans, insurance or guarantees.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	4-61dd(d)(2)
Sec. 2	<i>October 1, 2012</i>	46a-51(4)
Sec. 3	<i>October 1, 2012</i>	46a-52
Sec. 4	<i>October 1, 2012</i>	46a-58
Sec. 5	<i>October 1, 2012</i>	46a-89
Sec. 6	<i>October 1, 2012</i>	46a-68d
Sec. 7	<i>October 1, 2012</i>	4a-60
Sec. 8	<i>October 1, 2012</i>	New section
Sec. 9	<i>October 1, 2012</i>	4a-60a(a) and (b)
Sec. 10	<i>October 1, 2012</i>	4a-60g
Sec. 11	<i>October 1, 2012</i>	4a-61
Sec. 12	<i>October 1, 2012</i>	4a-62(a)
Sec. 13	<i>October 1, 2012</i>	46a-68b

**JUD**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 13 \$</b>	<b>FY 14 \$</b>
Human Rights & Opportunities, Com.	GF - Cost	Up to \$195,000	Up to \$260,000
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Cost	See Below	See Below
Dept. of Administrative Services	GF - Cost	See Below	See Below

Note: GF=General Fund

#### **Municipal Impact:**

<b>Municipalities</b>	<b>Effect</b>	<b>FY 13 \$</b>	<b>FY 14 \$</b>
All Municipalities	STATE MANDATE - Cost	See Below	See Below

### **Explanation**

There is a cost to the Commission on Human Rights and Opportunities (CHRO) associated with requiring municipalities to participate in the state's set-aside program for small and minority-owned businesses. Currently, three full-time HRO Representatives each monitor 125 state funded projects that qualify for the state set-aside program. The bill expands CHRO's authority to eligible projects in Connecticut's 169 municipalities. It is anticipated that the agency may need up to four additional staff positions to handle the additional caseload. An HRO Representative makes approximately \$65,000 per year, plus fringe benefits. As the bill is effective October 1, 2012, FY 13 costs to CHRO are estimated to be as high as \$195,000, plus fringe benefits, associated with adding four additional positions for nine

<sup>1</sup> The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated non-pension fringe benefit cost associated with most personnel changes is 29.22% of payroll in FY 13 and FY 14.

months.

The Department of Administrative Services (DAS) will incur costs associated with bringing municipalities into the state's small and minority business set-aside program due to the expected increase in contractor pre-qualifications, audits performed and disputes investigated. This cost cannot be determined at this time due to the unknown number of potential contractors who would participate.

DAS currently administers set-aside compliance for 59 state agencies and approximately 24 political subdivisions. Although the bill does not specify, it is assumed that the same set-aside goals currently in place for the state would be required for municipalities.<sup>2</sup>

Requiring municipalities to participate in the state's small and minority business set-aside program may increase the costs of certain contracts if contracts that would otherwise be awarded to the lowest qualified bidder are awarded to small and minority business contractors instead.

The bill makes several other changes to statutes concerning CHRO that do not have a fiscal impact.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

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<sup>2</sup> Set-aside goal establishment is accomplished currently with one full-time staff person, as data is centralized and partially automated within CORE-CT, the state's human resource and financial data system. Should DAS be required to establish individualized goals for each participating municipality additional staffing would be needed (Account Examiner positions at \$60,600 per year plus fringe benefits) to handle the increased workload.

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**OLR Bill Analysis****SB 455*****AN ACT CONCERNING THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES.*****SUMMARY:**

This bill requires municipalities to participate in the state's small and minority business set-aside program. Current law allows municipalities to establish such a program, but exempts municipal contracts from the mandatory state program. The state program requires state agencies to set aside some contracts for bidding exclusively by small and minority-owned businesses. By extending the program to municipalities, the bill requires them, as well as participating contractors, to comply with the state's requirements and procedures for the set-aside program.

The bill extends to municipal contracts requirements for non-discrimination provisions that currently apply to the state. Among other things, these provisions require contractors to agree to (1) not discriminate against various protected classes, (2) take affirmative action to employ qualified applicants, and (3) give the Commission on Human Rights and Opportunities (CHRO) information and access to records concerning the contractor's employment practices.

The bill changes the definition of "public works contracts" to include contracts with municipalities. This extends to municipal public works contractors various requirements. For example, contractors with 50 or more employees, that are awarded contracts over \$50,000 in a fiscal year, must file an affirmative action plan with CHRO. Public works contractors must also agree to make good faith efforts to employ minority-owned businesses as subcontractors and suppliers. The bill makes changes to this good faith requirement (for contractors with the state as well as municipalities) by further specifying actions that do or

not provide evidence of good faith.

The bill changes the timeframes for (1) contractors with large public works contracts with the state to submit affirmative action plans and (2) CHRO to approve the plans. It also changes the state's withholding requirement, from 2% monthly to a one-time 5% withholding, for such contracts when the contractor's affirmative action plan has not been approved.

The bill extends to veterans and active members of the armed forces the law's protections regarding employment, housing, and credit discrimination, as well as discrimination by the state in various contexts (e.g., equal employment in state agencies). It also allows CHRO to enforce complaints alleging violations of federal prohibitions on age discrimination.

The bill reduces required training for CHRO commissioners. It allows CHRO to appeal decisions by human rights referees on complaints alleging whistleblower retaliation. It also makes clarifications and other changes regarding the role of CHRO's commissioners and staff.

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2012

### **§§ 10-12 — SET-ASIDE PROGRAM**

The bill requires municipalities to participate in the state's small and minority business set-aside program. The program currently requires state agencies and political subdivisions, other than municipalities, to set aside contracts for bidding exclusively by small and minority-owned businesses. (By law, small businesses for this purpose are businesses with a principal place of business in Connecticut with gross revenues up to \$15 million in the most recent fiscal year before applying.) The contracts may be for constructing roads and buildings or providing goods and services.

By law, those state agencies and political subdivisions that are otherwise required to participate are exempt from the program if the total value of their contracts is less than \$10,000 in any given year. The bill extends this exemption to municipalities.

Under the bill, municipalities must comply with the state's requirements and procedures for bidding and awarding set-aside contracts. Consequently, businesses must be certified by the Department of Administrative Services (DAS) before they can bid on a municipal set-aside contract.

While existing law does not require municipalities to participate in the state's small and minority business set-aside program, it allows them to establish their own set-aside programs. The bill does not repeal that provision (CGS § 7-148u).

### ***Set-Aside Goals***

Existing law imposes the same set-aside goals on state entities and other political subdivisions required to participate in the set-aside program and municipalities that choose to establish a set-aside program. Both must annually set-aside at least 25% of the contracts for bidding by certified small businesses. They must also set aside 25% of that amount (6.25%) for contracts by certified minority owned businesses. The bill requires municipalities to participate in the set-aside program but does not specify whether the same set-aside goals would be required for municipalities. Presumably, the same requirements would apply.

### ***Administrative Options and Requirements***

By requiring municipalities to participate in the state set-aside program, the bill also extends to them several administrative options and requirements that currently apply only to the state or political subdivisions other than municipalities. These include that they:

1. in lieu of setting aside contracts themselves, may require general contractors to set-aside subcontracts for certified small and minority-owned businesses, in the same percentages as

specified above;

2. must notify the DAS commissioner about set-aside contract awards;
3. must require set-aside contractors or subcontractors to do at least 15% of the work with their own forces and at least 25% with certified contractors;
4. may require set-aside contractors or subcontractors to submit specific documents;
5. have the authority to audit businesses that apply for or are awarded set-aside contracts, or the audits can be done by DAS or CHRO, to determine eligibility and compliance with the law's requirements;
6. must accept letters of credit, meeting specified requirements, in lieu of bid, performance, and other bonds;
7. must follow the statutory enforcement procedure when the awarding authority has reason to believe a contractor or subcontractor willfully violated set-aside requirements; and
8. must submit (a) annual reports on their small and minority business set-aside program goals and (b) quarterly status reports on the implementation and results of such goals.

The bill also makes certain conforming changes concerning the set-aside program, including one regarding the DAS commissioner's duty to adopt regulations establishing procedures for awarding contracts under the program.

The law requires the DAS commissioner to conduct regular training sessions, as he deems necessary, to explain the set-aside program to state agencies and to specify the factors that must be addressed in calculating program goals (CGS § 4a-60h). The bill does not extend such training to municipalities.

**§§ 7 & 9 — NONDISCRIMINATION REQUIREMENTS FOR CONTRACTORS**

Current law generally requires state contracts and contracts of political subdivisions, other than municipalities, to contain anti-discrimination provisions that protect people based on race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability, physical disability, or sexual orientation. The bill extends these requirements to municipal contracts.

Under these provisions, the contractor must agree:

1. that in the performance of the contract it will not discriminate or permit discrimination in any manner prohibited by state or federal law;
2. to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are not discriminated against (the affirmative action provision does not apply to sexual orientation);
3. in all solicitations or advertisements for employees placed by or on its behalf to state that it is an “affirmative action-equal opportunity employer” in accordance with CHRO regulations;
4. to provide each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, and each vendor with which it has a contract or understanding, a notice from CHRO advising the labor union or workers’ representative of the contractor’s anti-discrimination and affirmative action commitments, and to post copies of the notice in conspicuous places available to employees and to applicants;
5. to comply with certain anti-discrimination and affirmative action laws and CHRO regulations and orders; and
6. to provide CHRO with whatever information it requests and



permit access to pertinent books, records, and accounts concerning its employment practices and procedures relating to anti-discrimination requirements.

In addition, if the contract is a public works contract, the contractor must agree in the contract to make good faith efforts to employ minority business enterprises as subcontractors and suppliers for the project (see below).

Before entering a contract with the state or other political subdivision, a contractor must provide documentation to support the nondiscrimination agreement and warranty the law requires. The bill extends this requirement to contracts with municipalities. For contractors with such contracts valued at \$50,000 or more for any year of the contract, the law specifies certain options for such documentation.

By law, these requirements do not apply to contracts between governmental or quasi-governmental entities. Specifically, the requirement does not apply to contracts in which each party is:

1. a municipality or other political subdivision of the state;
2. a quasi-public agency;
3. another state;
4. the federal government;
5. a foreign government; or
6. an agency of any of the above.

## **§§ 7 & 13 — PUBLIC WORKS CONTRACTS**

By law, contractors who enter into public works contracts must meet various requirements. Under current law, public works contracts are agreements between contractors and the state or any political subdivision of the state, other than a municipality, for the construction,

rehabilitation, conversion, extension, demolition, or repair of a public building, highway, or other changes or improvements in real property, or that are financed by the state, in whole or part.

The bill changes this definition to include such contracts with municipalities. Thus, the bill extends various requirements to contractors who enter into public works contracts with municipalities. The requirements are summarized below.

### ***Good Faith Effort to Employ Minority Business Enterprises***

By law, contractors must agree in public works contracts to make good faith efforts to employ minority business enterprises as subcontractors and suppliers. The bill extends these requirements to public works contracts with municipalities.

The law specifies a list of non-exclusive factors to determine whether a contractor has made good faith efforts to comply with this requirement. The bill provides that evidence of good faith efforts includes a contractor's employment and subcontracting practices that demonstrate that it has met or surpassed the set-aside goals of the awarding authority (i.e., the state or municipality). The bill further provides that it does not necessarily demonstrate a lack of good faith efforts if a contractor fails to solicit (1) bids from more than two subcontractors, vendors, or service providers; (2) subcontractors, vendors, or service providers in all project areas; or (3) less than all types of businesses that DAS has certified as eligible for set-aside contracts.

### ***Affirmative Action Plans***

By law, public works contractors with 50 or more employees that are awarded contracts over \$50,000 in a fiscal year must file an affirmative action plan with CHRO that complies with CHRO regulations. (The requirements differ in some respects for contracts costing more than \$500,000.) The bill extends these requirements to public works contracts with municipalities.

Under these requirements, a contractor that fails to develop an

approved affirmative action plan may not bid on or be awarded contracts until the requirement is met. When CHRO approves a plan it must issue a certificate of compliance, which is good for two years and becomes prima facie proof that the contractor can bid on and be awarded contracts. CHRO can revoke a certificate if the contractor does not implement the plan. The certificate does not excuse the contractor from reporting and record-keeping requirements or from CHRO monitoring.

### ***Compliance Reports***

The law also requires contractors to file, and require their subcontractors to file, compliance reports with CHRO, as CHRO directs. The bill extends these requirements to contracts with municipalities. The reports must contain information on their practices, policies, programs, and employment statistics. Additional provisions apply to contractors or subcontractors that use union labor, worker referral agencies, or apprenticeship training or supervising agencies.

### ***Noncompliance and CHRO Enforcement***

The bill extends to municipal contracts the current prohibition on contracting agencies entering into contracts with bidders or prospective contractors that have not complied with the law's requirements regarding affirmative action plans, set-aside programs, and compliance reports.

The enforcement provisions for violations of these requirements are the same as under existing law. These include the right to appeal.

## **§ 6 — CONTRACT WITHHOLDING DUE TO NONCOMPLIANCE WITH AFFIRMATIVE ACTION REQUIREMENTS**

With certain exceptions, the law requires public building contracts with the state costing more than \$500,000 to be awarded by competitive bidding to the lowest responsible qualified bidder.

Under current law, after a bid has been accepted but before the contract is awarded, the successful bidder must file an affirmative

action plan with CHRO for its approval. The bill instead requires the plan filing and approval after the contract is awarded but before it is completed. By law, CHRO can conditionally accept a plan if the contractor assures, in writing, that it will amend the plan to conform to affirmative action requirements.

Under current law, the state must withhold 2% of the contract price per month from any payment made to the contractor until CHRO approves the plan. The bill instead requires a one-time 5% withholding until CHRO approves the plan.

## **§ 8 — DISCRIMINATION AGAINST VETERANS AND ACTIVE MEMBERS OF THE ARMED FORCES**

The bill extends to veterans and active members of the armed forces various protections against discrimination that currently apply to other protected groups. The bill applies the same rules, procedures, and remedies that apply to other types of discrimination complaints, including the right to file a lawsuit if the investigation is not completed within a certain time. The protections are explained below.

***Employment Discrimination.*** The bill prohibits an employer or employer's agent, except in the case of a bona fide occupational qualification or need, from refusing to hire or employ someone; barring or discharging someone from employment; or discriminating against someone in pay or in employment terms, conditions, or privileges because the person is in the armed forces or is a veteran. This prohibition applies to any employer (including the state, municipalities, and other political subdivisions) that employs three or more people. It applies to all employees except those employed (1) by their parents, spouse, or children, or (2) in domestic service.

The bill also prohibits the following kinds of discrimination based on the person serving in the armed forces or being a veteran:

1. employment agencies failing or refusing to classify properly or refer for employment or otherwise discriminating against someone except in the case of a bona fide occupational

qualification or need;

2. labor organizations excluding someone from full membership rights, expelling a member, or discriminating in any way against a member, employer, or employee, unless the action is due to a bona fide occupational qualification;
3. employers, employment agencies, labor organizations, or anyone else discriminating against someone because he or she opposed a discriminatory employment practice, brought a complaint, or testified or assisted someone else in a complaint;
4. any person aiding, abetting, inciting, compelling, or coercing someone to commit a discriminatory employment practice or attempting to do so; and
5. employers, employment agencies, labor organizations, or anyone else advertising employment opportunities in a way that restricts employment and thus discriminates, except for a bona fide occupational qualification or need.

**Housing Discrimination.** The bill prohibits the following kinds of housing discrimination based on someone being a member of the armed forces or a veteran:

1. refusing to sell or rent after a person makes a bona fide offer, or refusing to negotiate for the sale or rental of a dwelling, or otherwise denying or making a dwelling unavailable;
2. discriminating in the terms, conditions, or privileges of a dwelling's sale or rental, or in the provision of services or facilities in connection with the sale or rental;
3. making, printing, publishing, or causing this to be done, any notice, statement, or advertisement concerning the sale or rental of a dwelling that indicates a preference, limitation, or discrimination, or an intention to make such a preference, limitation, or discrimination;

4. falsely representing to someone that a dwelling is not available for inspection, sale, or rental;
5. for profit, inducing or attempting to induce someone to sell or rent a dwelling by representing that people of a particular armed forces or veteran status are moving, or may move, into the neighborhood;
6. any person or entity engaging in residential real estate transactions discriminating in making a transaction available or its terms or conditions;
7. denying someone access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminating in the terms or conditions of such access, membership, or participation; or
8. coercing, intimidating, threatening, or interfering with someone in the exercise or enjoyment of, or on account of the person having exercised, enjoyed, or aided or encouraged someone else in the exercise or enjoyment of, these rights.

Violators are subject to a fine of between \$25 and \$100, up to 30 days' imprisonment, or both.

The law's prohibitions on housing discrimination do not apply to either of the following, if the owner maintains his or her residence there: (1) renting a room or rooms in a single-family home or (2) a unit in a two-family home.

**Credit Discrimination.** The bill prohibits a creditor from discriminating against any adult in a credit transaction on the basis of the person being a member of the armed forces or a veteran.

**Requirements for State Agencies.** The bill also extends to armed forces members and veterans certain protections from discrimination that specifically apply to their interactions with the state. The bill:

1. requires state officials and supervisory personnel to recruit, appoint, assign, train, evaluate, and promote state personnel on the basis of merit and qualifications, without regard for someone being in the armed forces or a veteran;
2. requires state agency services to be performed without discrimination based on someone being in the armed forces or a veteran;
3. requires any state agency that provides employment referrals or placement services to public or private employers to reject any job request that indicates an intention to exclude someone based on the person being in the armed forces or a veteran;
4. requires all educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state agencies, or in which state agencies participate, to be open to all qualified persons, without regard to the person being in the armed forces or a veteran; and
5. prohibits a person's status as a veteran or armed services members from being considered as limiting factors in state-administered programs involving the distribution of funds to qualify applicants for benefits authorized by law, and prohibits the state from giving financial assistance to public agencies, private institutions, or other organizations which discriminate on this basis.

#### **§ 4 — AGE DISCRIMINATION**

Under current law, it is a discriminatory practice for anyone to deprive another person of any rights, privileges, or immunities, secured or protected by Connecticut or federal laws or constitutions, or cause such a deprivation, because of religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness, or physical disability. The bill adds age to this list.

This change allows CHRO to enforce federal age discrimination

laws. It already enforces state age discrimination laws. Various other provisions in state law already prohibit discrimination based on age.

### **§§ 1-3 & 5 — CHRO**

By law, CHRO is overseen by nine commissioners (five appointed by the governor and four by legislative leaders, with the general assembly's advice and consent). The bill refers to the commissioners as the governing board.

The bill makes several changes clarifying the role of the commissioners (i.e, the appointed members of the governing board) and the role of CHRO's staff. For example, it clarifies that the commissioners, and not CHRO generally, appoint and supervise CHRO's executive director.

The bill specifies that CHRO, and not an individual commissioner, has the authority to bring a petition for equitable relief in employment discrimination matters. It also specifies that CHRO, and not an individual commissioner, can apply for injunctive relief, punitive damages, or civil penalties in matters concerning housing or public accommodations discrimination.

### **§ 1 — Whistleblower Complaints**

By law, state officers, employees, and appointing authorities; officers and employees of quasi-public agencies; and large state contractors may not take or threaten to take any personnel action in retaliation for a whistleblower disclosure. The bill requires the chief human rights attorney, upon receiving an employee's complaint alleging retaliation for a whistleblower disclosure, to have a copy of the complaint hand delivered or mailed to CHRO's supervising attorney.

The bill also allows CHRO to appeal the decision of a human rights referee following hearings on such complaints. The law already allows parties to appeal.

### **§ 3 — Commissioner Training**



The bill reduces the required hours of introductory training for commissioners, from 10 to five (required within two months of their appointment and before they can vote on a commission matter). It also reduces their required annual training in subsequent years, from five to three hours.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea    30    Nay   15    (04/02/2012)